IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 320 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NIRMALSINH ALIAS NILESH BHARATSINH JADEJA

Versus

STATE OF GUJARAT

Appearance:

MR SAURIN A SHAH for Appellant

MR PRADIP D BHATE APP for Respondent

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 11/10/2004

ORAL JUDGEMENT

1. This Appeal is preferred by the appellant under Section 374 (2) of the Criminal Procedure Code against judgment and order delivered by learned Additional

Sessions Judge, Ahmedabad (Rural) at Gandhinagar, on 12th of March, 2001, in Sessions Case No.30 of 1999. Vide this judgment impugned in this Appeal, the present appellant came to be convicted for the offence proved against him under Section 363 of the Indian Penal Code and was sentenced to undergo five years rigorous imprisonment and fine of Rs.1,000/- in default to undergo simple imprisonment of four months; he was also convicted for the offence proved against him under Section 365 of the IPC and was sentenced to undergo five years rigorous imprisonment and fine of Rs.1,000/- in default to undergo simple imprisonment of four months. The appellant was also convicted for the offence proved against him under Section 344 of the Indian Penal Code and was sentenced to undergo rigorous imprisonment of two years and fine of Rs.500/- in default to undergo simple imprisonment of two months. The appellant was also convicted for the offence proved against him under Section 346 of the Indian Penal Code and was sentenced to undergo rigorous imprisonment of two years and fine of Rs.500/- in default to undergo simple imprisonment of two months. The appellant was also convicted for the offence under Section 324 of the IPC and was sentenced to undergo two years rigorous imprisonment and fine of Rs.500/- in default to undergo two months simple imprisonment. The appellant was found guilty for the offence under Section 354 of the Indian Penal Code and was sentenced to undergo rigorous imprisonment of two years and fine of Rs.500/- in default to undergo simple imprisonment of two months. The learned Trial Judge was pleased to make all the sentences to run concurrently except sentence of imprisonment of two years awarded by him for the offence under Section 346 of the Indian Penal Code. Meaning thereby that, the sentence of imprisonment awarded by the learned Trial Judge for the offence under Section 346 of the IPC was to run consecutively after the sentences awarded for all other offences are served and made to run concurrently as per the Sections 31 and 427 of the Criminal Procedure Code as mentioned in Para-179 of the judgment impugned in this Appeal.

2. The facts of the case are of gravest nature and lurid wherein a female child Ruchi Deepakbhai, aged about three and half years, was kidnapped by the appellant, on 6th of April, 1999 from her school at Gandhi Nagar and was confined secretly for malicious intention and was molested. On the day of the incident, Ruchi was sent to the school at 11'O clock in one Maruti van and on return at about 3.30 p.m. she was not found in the class by driver of the said van. Her parents were informed. A thorough search was made in the school and in the evening

in the Police Station situated at Sector 21 of Gandhi Nagar, father of the victim, filed complaint about disappearance of this unfortunate child. Different agencies of Police investigated the offence. Ultimately, on 16th of April, 1999, Ruchi was found from Gandhi Nagar itself and she was physically injured and was taken to Civil Hospital at Ahmedabad and was kept in intensive Care Unit. Ultimately, a charge sheet came to be filed against the present appellant. The appellant was assisting school children for coming to the school and sending them back home in a chartered maruti van.

3. Suffice it is to say that the facts of this case are the gravest one. The further details are not narrated because the learned Advocate for the appellant did not address this Court on the merits of the case and contended only one issue about running of sentence of imprisonment concurrent awarded to the appellant for the offence under Section 346 IPC with other sentences awarded to the appellant.

4. Thus, the learned Advocate Mr. Saurin A Shah for the appellant and learned APP Mr.Pradip D Bhate for the State were heard on the above issue as to whether any interference is required in the judgment and order impugned in respect of making the sentence awarded for the offence under Section 346 IPC to run concurrently with the other sentences awarded to the appellant in the trial by the learned Trial Judge.

5. Learned APP Mr.Bhate vehemently contested this contention on the ground that the facts of the case are so grave in the nature that even the sentence awarded appears to be inadequate, but unfortunately the State has not filed any appeal for the enhancement of the sentences awarded by the learned Trial Judge though for the offences proved against the appellant under Sections 342 and 346 maximum sentence provided for, is awarded by the learned Trial Judge. It was contended that allowing the sentence awarded for under Section 346 IPC to run concurrently will be benefitted to the appellant to the extent that he will be released earlier so as to send wrong message in the society for the heinous crime which he has committed in respect of child of three and half years.

6. True it is that, there cannot be any sympathy towards appellant so far as the facts and circumstances of the case is concerned in the shape of reduction in sentences, but certain facts are required to be taken into consideration while evaluating the contention

advanced by the appellant side that sentence awarded for under Section 346 is required to be made to run concurrently. It is also true that under Sections 31 and 427 of the Criminal Procedure Code, it is always the discretion of a court whether to direct the sentences awarded to run concurrently. If such directions are not given, then the sentences awarded in the same trail also shall run consecutively. Though there are no guidelines when the sentences to run concurrently or consecutively, but in most of the cases, when an accused is convicted for distinct offences in one trial, sentences awarded for each of such offence is ordinarily made to run concurrently. Undoubtedly, this case is an exceptional one, and in ordinary circumstances, having regard to very serious fact of this case, the request made on behalf of the appellant to the limited extent to make the sentences awarded for Section 346 to run concurrently might also have been turned down. However, learned APP has placed on record a communication addressed to him by Jailor, Central Jail, Ahmedabad, which is dated 11th of October, 2004, indicating that even if the sentence awarded to the appellant for Section 346 IPC is not made to run concurrently with other sentences, and if the appellant pays all the fines imposed upon him, he is likely to be released from the prison after completion of the whole sentences in the month of March, 2005. This is so because he earns remission of one year according to law.

7. Considering this aspect of the matter that if he pays all the fines and if as contended the sentence awarded under Section 346 IPC is made to run concurrently with other sentences, then also, on condition to pay fine, the appellant would be benefitted only 4 or 5 months i.e. to say that, instead of March 2005 he would be released from Jail in October 2004. This is so because, as indicated above, the said communication addressed by the Sub-Jailor, Ahmedabad Central Jail, the appellant earned remission in the sentence for one year. It is also required to be considered along with this situation that the State has not filed any Appeal for the enhancement.

8. In view of the above, though in ordinary circumstances, having regard to the gravest kind of facts and circumstances of this case, the request made on behalf of the appellant might have been turned down, but since he is otherwise to be released in March 2005 on completing his sentences awarded by the Trial Court, the request made on behalf of the appellant requires acceptance to interfere in the appeal only to the limited extent to make the sentence awarded by learned Judge for

the offence under Section 346 of the IPC to run concurrently along with the other sentences.

9. In the result, except directing that the sentence of imprisonment awarded by the learned Trail Judge to the appellant for the offence proved against him under Section 346 IPC to run concurrently with the other sentences awarded to the appellant and interfering in the Appeal only in this limited aspect, the rest of the whole Appeal of the appellant stands dismissed. DS permitted.

(J.R.Vora, J.)

p.n.nair